

PTO/SB/22 (10-00)

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PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)

Docket Number (Optional)

In re Application of

HEINRICH, STEPHEN C.

Application Number

10/002,589

Filed

12/05/01

For MULTI-PURPOSE RESCUE, BODY SUPPORT,
ANCHOR AND TOW STRAP

Group Art Unit

3652

Examiner

CHIN, PAUL T.

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and appropriate non-small-entity fee are as follows (check time period desired):

☒ One month (37 CFR 1.17(a)(1))

\$ 55.00

☐ Two months (37 CFR 1.17(a)(2))

\$

☐ Three months (37 CFR 1.17(a)(3))

\$

☐ Four months (37 CFR 1.17(a)(4))

\$

☐ Five months (37 CFR 1.17(a)(5))

\$

☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee amount shown above is reduced by one-half, and the resulting fee is: \$ 55.00.

☐ A check in the amount of the fee is enclosed.

☒ Payment by credit card. Form PTO-2038 is attached.

☐ The Commissioner has already been authorized to charge fees in this application to a Deposit Account.

☐ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number _____.

I have enclosed a duplicate copy of this sheet.

I am the ☐ applicant/inventor

☐ assignee of record of the entire interest. See 37 CFR 3.71.

Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☒ attorney or agent of record.

☐ attorney or agent under 37 CFR 1.34(a).

Registration number if acting under 37 CFR 1.34(a) _____.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

03/26/2004 ARRAY1 00000001 10002530

01 FC:225

March 24, 2004
Date

William Weigl
Signature

WILLIAM WEIGL
Typed or printed name

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of _____ forms are submitted.

Burden Hour Statement: This form is estimated to take 0.1 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

FAX TRANSMISSION

From: William Weigl Ph: 937/339-1180 Fax: 937/339-6531

e-mail: weiglpat@erinet.com

To: PAUL T. CHIN, Examiner, A.U. 3652

Date 03/25/2004 Time 12:25PM No. of pages 4

SUBJECT

STEPHEN C. HEINRICHS; S.N. 10/002,589; Filed 12/05/2001; Atty. Doc. SCH 102

PAYMENT OF EXTENSION FEE UNDER PROTEST


Attached is a Petition for Extension of Time Under 37 CFR 1.136(a), along with a form PTO-2038 to pay the petition fee of \$55 by credit card.

FACTS

1. A first NON-FINAL OFFICE ACTION was rendered 12/24/2003, more than 2 years after the filing date.
2. To expedite the prosecution, a fax response was made on 01/20/2004, more than 2 months prior to the due date. I was out-of-state for the entire month of Feb. 2004, my files being inaccessible to me. Forwarded mail containing a Notice of Non-Compliant Amendment reached me about mid-February. I reviewed it and noted that it required a ONE MONTH response by Feb. 27. I studied the requirement further and interpreted it to be intended to cover those situations where the PTO did not pick up the response until after the due date had passed. Since the actual due date of March 24 allowed three weeks to attend to the Notice after my return, I logged it into my Palm Pilot to take up immediately upon my return.
3. On return on March 1, I promptly called Ms. Ann E. Carrington to inquire what needed to be done. She advised me of the recent Revised Amendment Practice and referred me to the USPTO website. I was totally unaware of the change in amendment practice, having received absolutely no notice thereof from the USPTO, nor having heard any mention of it in the Dayton Intellectual Property Law Assn. monthly meetings which I attend regularly.
4. I promptly looked up the website, completely redid the previous amendment (which I and the USPTO now regard as a complete nullity), and faxed the corrected amendment to the USPTO as Paper 5 on 03/04/2004, more than three weeks before the 3-months response period ended.
5. On 03/23/04, still within the 3-month response period, Ms. Carrington phoned to advise me that I failed to include the one-month extension fee. In effect, her position was that the ONE MONTH extension of the Notice nullified the 3-month response period. I found it difficult to accept, so she referred me to you. I said it appeared to me that the time extension was intended to cover a bona fide amendment attempt made near the end of the 3-month period, in effect giving a person caught in this dilemma an extra month to respond, i.e., a 4-month period. This discourages early response and encourages late response, just before the due date.
6. We then spoke and you indicated that my only recourse would be to petition.

7. The last paragraph of the Notice of Non-Compliant Amendment is **ambiguous, at best**. The ONE MONTH response time ought also indicate something to the effect that the response time is "ONE MONTH" or the original time to respond to the Office Action, if such time is later. If the rule was actually intended to be interpreted as it is by Ms. Carrington, then there should be an appropriate notice given in every Office Action Summary that the time for response is expunged once an amendment is filed, OR that the 3-month period may become shortened if a Notice of Non-Compliant Amendment is made under 37 C.F.R. 1.121. IS THERE ANYTHING IN THE MPEP OF CFR THAT ADDRESSES THAT ISSUE?

It is respectfully requested that the credit card payment made by the attached form PTO-2038 not be posted until the facts of this case be addressed by appropriate supervisory personnel. If my position is found to have the merit that I believe it does, it would seem best not to bother billing against my credit card and subsequently have to make a refund.


William Weigl
Reg. No 18,148

Note: This fax may contain confidential and/or proprietary information. If received by an unintended party, please contact the sender, reversing any phone charges. It is not intended that this constitute a publication of the information.